MASSACHUSETTS LABOR RELATIONS COMMISSION

FISCAL YEAR 1993

ANNUAL REPORT

COMMONWEALTH OF MASSACHUSETTS

LABOR RELATIONS COMMISSION

FISCAL YEAR 1993 ANNUAL REPORT

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LABOR RELATIONS COMMISSION

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I. INTRODUCTION

STATEMENT OF THE COMMISSION'S RESPONSIBILITIES

The Labor Relations Commission is a quasi-judicial agency whose purpose is to ensure the prompt, peaceful, and fair resolution of labor disputes by enforcing the labor relations laws of the Commonwealth. As the state counterpart to the National Labor Relations Board, the Commission administers the Public Employee Bargaining Law and the Private Sector Collective Bargaining Law, General Laws Chapter 150E and 150A respectively. These laws give employees of state and local government, and employees of private businesses which do not come within the jurisdiction of the NLRB the right and protection:

- to form, join, or participate in a union or association;
- to bargain collectively over terms and conditions of employment such as wages, hours and benefits;
- to engage in other concerted activity for mutual aid and protection; and
- to refrain from participating in any of these activities.

The Commission has existed since 1937, and its jurisdiction has been expanded frequently. The legislature has granted full collective bargaining rights to state, county and municipal employees in the executive and judicial branches of government. Approximately 98% of the Commission's caseload deals with labor matters affecting public employees and 2% of the caseload concerns the employees of private employers. By guaranteeing to employees the right to choose freely whether or not to be represented by a union and by impartially adjudicating claims between employees, employers and unions, the Commission ensures that labor and management live within the strictures of the state's collective bargaining laws. Through its case resolution techniques the Commission establishes labor relations policy for public employees throughout Massachusetts.

Pursuant to its responsibility to ensure the timely, peaceful, and fair resolution of labor disputes, the Commission performs the following primary functions:

1. Disposition of Unfair Labor Practice Charges

The Commission adjudicates charges of unfair labor practices as defined by the Laws. For example, charges may be filed by either a union or an employer alleging that the opposing party has not bargained in good faith. A charge may be filed by an individual against an employer claiming that the employer has discriminated against her or him because of her or his union activity. Charges may also stem from allegations by individuals that their union has not represented them fairly.

Whenever an employee, union, or employer files a charge with the Commission claiming that either an employer or union has committed an unfair labor practice, the Commission investigates the charge and after reviewing the facts alleged and legal arguments of the parties, determines whether it has "probable cause" to issue a complaint and conduct a hearing. If the charge is dismissed without a hearing, the charging party may request reconsideration of the matter by the Commission. If the Commission affirms the dismissal, the charging party may seek judicial review in the Appeals Court.

If the Commission determines that probable cause exists to believe that the law has been violated, a complaint is issued and a public hearing is conducted. At the hearing, the parties may be represented by counsel, witnesses are sworn and evidence is taken. Following the hearing each side has the opportunity either to file briefs or to offer closing arguments.

The administrative law judge may issue either a decision or recommended findings of fact. Either may be reviewed by the full Commission. Final Commission decisions may be appealed to the Massachusetts Appeals Court.

All administrative law judge and final Commission decisions are written and are periodically published for the benefit of the public and the labor community in the Massachusetts Labor Cases, a private reporter service. The Commission's decisions are also available by CD ROM subscription through the Social Law Library. Excerpts of the decisions are also published in Mass. Lawyer's Weekly, National Public Employment Reporter, Government Employee Relations Report, Labor Relations Reporter, and Public Employee Bargaining. The Commission's decisions guide the conduct of collective bargaining and the relationship between labor and management throughout the Commonwealth.

2. Conduct of Representation Elections and Bargaining Unit Determination

The Commission conducts secret ballot elections so that employees may choose whether to be represented by a union. Elections are conducted whenever (1) one or more employee organizations claim to represent a substantial number of employees in an appropriate unit; (2) an employee organization petitions the Commission alleging that a substantial number of employees wish to be represented by the petitioner; or (3) a substantial number of employees in a bargaining unit allege that the exclusive representative no longer represents a majority of the employees.
Elections may be conducted "on site" or by mail ballot procedures depending on the size of the unit and the relative cost of each type of election.

By law, the Commission also must determine what bargaining unit is "appropriate" for collective bargaining. The agency must consider the "community of interest" that exists between different classifications of employees, the efficiency of the employer's operations, and the interests of employees in "effective" representation. The Commission assists the parties to reach agreement concerning an appropriate unit. When no agreement is possible, however, the Commission holds a hearing and issues a written decision.

3. Prevention and Termination of Strikes

Strikes by the employees of most public employers are illegal under General Laws Chapter 150E. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the Commission for an investigation. The Commission quickly investigates and decides whether an unlawful strike is occurring or about to occur. If unlawful strike activity is found the Commission directs striking employees back to work and issues other orders designed to help the parties resolve the underlying dispute. Most strikes end after issuance of the Commission's order, but judicial enforcement of the order sometimes necessitates Superior Court litigation which can result in court-imposed sanctions against strikers.

4. Agency Service Fee Determinations

Chapter 150E allows public employers to enter into collective bargaining agreements which require non-union employees covered by the agreement to pay an agency service fee to the union, "commensurate with the cost of

collective bargaining and contract administration," as a condition of continued employment. Employees may challenge the amount of the annual agency service fee by filing an "amount" charge with the Commission. Such charges require a detailed evaluation of the union's expenses. Employees also may challenge a union's legal right to collect a fee by filing a validity charge with the Commission. Hundreds of charges are filed each year raising questions of constitutional rights, auditing and accounting practices as well as some labor policy issues. The Commission's rulings have set precedent in this emerging area of the law.

5. Court Litigation

Parties to final decisions issued by the Commission may appeal the decision directly to the Massachusetts Appeals Court. For this reason the Commission functions as a trial level court for labor relations cases. Further appellate review may be sought before the Massachusetts Supreme Judicial Court. In addition, the Commission may bring suit in the Appeals Court to enforce compliance with final decisions of the Agency. Although the Appeals Court has original jurisdiction over Commission final orders, the Supreme Judicial Court often takes cases directly on appeal either at the request of a party or on its own motion. The Commission also occasionally must seek judicial enforcement in Superior Court of orders directing public employees to cease engaging in illegal strike activities. Commission staff attorneys represent the Commission and conduct all of the agency's litigation.

6. Other Responsibilities

The Commission processes unit clarification petitions and requests for binding arbitration. Clarification petitions may be filed by an employee organization or an employer for the purpose of clarifying or amending a recognized or certified bargaining unit.

Massachusetts law specifies that a party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration, may petition the Commission to order grievance arbitration. These "Requests For Binding Arbitration" are processed quickly by the Commission to assist the parties to resolve their grievances.

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations and the bargaining units they represent. Section 7 of Chapter 150E requires public employers to

file copies of all collective bargaining agreements with the Commission. The Commission requires labor organizations to provide the following information: the name and address of current officers, address where notices can be sent, date of organization, date of certification, and expiration date of signed agreements. Each organization must also file an annual report with the Commission containing: "the aims and objectives of such organization, the scale of dues, initiation fees, fines and assessments to be charged to the members, and the annual salaries to be paid officers." Budget constraints preclude institution of a "tickler" system to remind labor organizations of their filing obligations. Instead, the Commission relies upon various internal case-processing incentives to encourage compliance with the filing requirements.

7. Caseload summary

As case statistics indicate, the Commission primarily serves the public sector population including individual employees, unions, and employers. Public employment statistics retrieved from the findings of the 1987 Census of Governments, Survey of Government Employment[1] disclose that of the total number of full-time and part-time public employees, 69.3 percent or 227,648, were represented in bargaining units. As of October 1987, the number of public employee bargaining units in state and local governments, including school districts and special districts, was 2,563, an increase of 411, or 19 percent, from October 1982.

During fiscal year 1993, 994 cases were filed with the Labor Relations Commission. Of these, 979, or 98.5%, were filed pursuant to the agency's public sector collective bargaining jurisdiction under General Laws Chapter 150E. The remaining 15 cases dealt with the Commission's authority under General Laws Chapter 150A.

8. Agency Priorities

The Commission's highest priority is to enforce the state's collective bargaining laws and to promote productive labor relations by resolving cases filed with the Commission as quickly as possible. Time required to resolve a case varies depending upon the nature of the legal claims, the resources of the

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[1] U.S. Department of Commerce, Bureau of Census. 1987 Census of Government, v.3, no.3, "Labor-Management Relations in State and Local Governments". Washington, D.C., June 1991.

parties and the resources of the Commission. Each charge requires docketing and clerical time; investigation and deliberation time; preparation of a complaint or dismissal order; and, when the charges are deemed sufficiently meritorious, a hearing with detailed factual findings and a legal decision, followed by time for appeals. Constitutional principles of due process dictate each step in the procedure; but the Commission has implemented techniques designed to reduce the agency personnel time required to perform each step. Beginning July 1, 1993, the Commission has instituted a mandatory written procedure policy for unfair labor practice cases. This policy, which requires the parties to submit detailed documentation to the Commission, replaces time consuming, in-person investigation procedures and will eventually result in a faster processing of cases. During FY 1994 the Commission will implement additional procedures intended to emphasize case settlement as a means to improve productivity by resolving cases without time consuming trials.

Simultaneously the Commission is committed to quality. By delivering clear legal opinions that provide guidance to the labor-management community, the Commission attempts not only to resolve the specific legal controversy that is the subject of the decision, but also to establish clear legal precedent that will guide other parties in the conduct of their labor relations.

II. STRUCTURE OF THE COMMISSION

The Commission consists of three members who are appointed by the Governor for staggered five-year terms. One Commissioner is designated as chairperson. Any member of the Commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law. The Commissioners manage the Commission, hear and decide cases pending before the agency, authorize all litigation, and manage all personnel. For administrative purposes, the Commission is within, but not subject to the jurisdiction of, the Executive Office of Labor.

The Executive Secretary directs and supervises certain employees of the Commission. He or she assists the Commissioners in budgetary and other administrative matters, informs the Commission of the status of all matters pending before it, and maintains a permanent record of the disposition of cases. The Assistant to the Executive Secretary supervises all case scheduling at the Commission.

The Chief Counsel directs and supervises the legal staff in their duties of investigating cases, conducting hearings, and writing decisions. He or she also serves as the Commissioners' principal legal advisor. The Deputy Chief Counsel supervises the legal staff with respect to all litigation before the courts of the Commonwealth.

The administrative law judges and examiners, designated by the Commission as its agents, investigate and hear cases, and write decisions. Attorneys may also appear and represent the Commission in any court proceeding. Election specialists conduct on-site and mail ballot representation elections.

The administrative support staff docket all cases, type notices, decisions and court briefs, tabulate statistics, and process all internal and external records handled by the Commission, including personnel and purchasing records.

III. PUBLIC INFORMATION/COMMUNITY RELATIONS

The Commission understands that employees, unions and employers are better able to comply with the law when they understand their statutory rights and responsibilities. By providing information to the public and meeting with groups of employers and employees, the Commission attempts to reduce the numbers of charges filed. The Commission has authored A Guide to the Public Employee Collective Bargaining Law (now in its 2nd edition) which explains Commission procedures, summarizes decisions and includes the text of the law and the Commission's regulations. The Guide is published and sold by the University of Massachusetts Institute of Government Services and used extensively by the public.

A Commission staff member is assigned to "Officer of the Day" duty from 1:00 p.m. to 5:00 p.m. to aid the many people who call or walk into the Commission with labor-related problems. Although the Commission cannot always solve such problems, the "Officer of the Day" provides accurate information to assist the public. The "Officer of the Day" also answers questions from the press concerning the status of various cases before the Commission. The Commission receives many public information inquiries daily and has installed a special employment law information tape-recording to accurately answer hundreds of telephone inquiries while saving staff time.

The Commission also supplies information to three local professional publications to inform practitioners in the field of public sector labor relations. The Massachusetts Labor Relations Reporter publishes information concerning

decisions, court cases, hearings, elections, complaints, and all other activities; Massachusetts Labor Cases prints all Commission decisions in full; and Massachusetts Lawyers Weekly prints summaries of Commission decisions. Commission decisions are also frequently reported in national publications, including Government Employee Relations Reporter, the Bureau of National Affairs Labor Relations Reference Manual, and the Commerce Clearing House Labor Cases.

Commission agents travel across the state in an effort to make the Commission's services more accessible. Most elections are conducted at the place of employment. The Commission has also provided training to large groups of constituents to prevent prohibited practices.

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ADMINISTRATIVE DECISION HIGHLIGHTS

The issue in Brockton School Committee, 19 MLC 1120 (1992) was whether a School Committee can decline to bargain about economic items during negotiations for a successor agreement unless it receives additional funds from the appropriating body. The Commission concluded that a School Committee is free to offer a good faith proposal of a 0% economic increase if it reasonably believes it cannot afford any wage increase. Alternatively, it can offer an increase conditioned on legislative approval of a budget of a specified amount, or it can propose a wage reopener clause. However, it cannot simply refuse to discuss economic items until a third party acts without the consent of the union because to do so frustrates the bargaining process. Therefore, the Commission found that the School Committee in this case had violated Sections 10(a)(1) and (5) of the Law by refusing to bargain until after the City Council had finalized the School Committee's budget.

In City of Brockton, 19 MLC 1139 (1992), the issue before the Commission was whether the City had failed to bargain in good faith when the Brockton Retirement Board gave pay raises to three clerical employees who worked at the Retirement Board without giving the unions representing the City clerical employees notice and an opportunity to bargain about those increases. The Commission was asked to determine whether the City or the Retirement Board was the employer of the employees who received the wage increases.

The Retirement Board operated under G.L.c. 32 and was composed of three members, including the City auditor. G.L.c. 32 confers fiscal autonomy on municipal retirement systems, and, as a result, the City was obligated to fund the Retirement Board's pension obligations and the full cost of administering the Board, without control of those costs. The Retirement Board maintained its funds in a separate account from City funds, and paid its employees salaries directly.

The Commission re-examined the 1982 decision in City of Malden, 9 MLC 1073 (1982), in light of a subsequent Appeals Court opinion in Everett Retirement Board v. Board of Assessors of Everett, 19 Mass. App. Ct. 305 (1985) and concluded that the Brockton Retirement Board, not the City of Brockton, was the employer of the clerical employees who had received the wage increase from the Retirement Board. In Everett Retirement Board, the Appeals Court had held that the expense fund component of retirement system budgets is not subject to municipal control. Accordingly, the Commission

concluded that the Brockton Retirement Board had fiscal and administrative autonomy from the City which prevented the City's control of the staffing and expense fund components of the Board.

The Commission considered the relationship between G.L.c. 150E and the Joint Labor Management Committee's (JLMC) responsibility over municipal police and fire negotiations under Section 4A of c. 1078 of the Acts of 1973 (Section 4A) in Town of Stoughton, 19 MLC 1155 (1992). Noting that the JLMC procedures under Section 4A are directed at resolving disputes over contract terms while the Commission's statutory mandate contemplates issuing judicially-enforceable remedies for violations of Chapter 150E, the Commission found nothing in the language of either statute that would preclude the Commission from exercising jurisdiction over the same parties or the same dispute that might be before the JLMC. Rather, the Commission concluded that the two statutory schemes must be read in harmony so that the Commission's adjudicatory role and the JLMC's conciliatory role are both preserved. Therefore, the potential for the JLMC asserting jurisdiction did not preclude the Commission from determining whether the parties were at impasse for purposes of Chapter 150E.

Next, the Commission considered whether the parties to a bargaining dispute are obligated to exhaust the procedures under Section 4A before an employer could lawfully implement a proposal. Noting that Section 9 of Chapter 150E had been amended, following the decision in Commonwealth of Massachusetts, 8 MLC 1978 (1982), aff'd sub nom. Massachusetts Organization of State Engineers and Scientists v. Labor Relations Commission, 389 Mass. 920 (1983), to require exhaustion of dispute resolution procedures prior to implementation of any unilateral change, the Commission found significant the absence of any similar amendment to Section 4A. As a consequence, the Commission concluded it is not a per se violation of c. 150E for employer to implement changes in working conditions that are reasonably comprehended in its bargaining proposals prior to exhaustion of the mediation, fact-finding and arbitration dispute resolution procedures under Section 4A. Instead, the Commission announced its intent to continue to analyze on a case-by-case basis whether the parties were at a good faith bargaining impasse when on party implements a unilateral change consistent with its last bargaining proposal.

The central issue in Lawrence School Committee, 19 MLC 1167 (1992) was whether the validity of a collective bargaining agreement negotiated by a school committee outside of Boston was contingent on funding by the legislative body or whether those agreements are enforceable when executed. The Commission determined that the literal language of the last sentence of

Section 7(b) of the Law exempts school committee contracts outside of Boston from the requirement that public employers submit requests for appropriations necessary to fund cost items to the appropriate legislative body. The Commission also relied on the language of G.L.c. 71, Section 34, which gives school committees autonomy over expenditures within an aggregate appropriation from the municipal legislative body. Therefore, the Commission held that, although a school committee may request additional funding to cover the cost of a collective bargaining agreement, the agreement is not contingent on funding and is valid at the time it is executed.

In City of Boston, 19 MLC 1203 (1992), the Commission considered for the first time whether an involuntary transfer infringed on an employee's right to engage in activities protected by Section 2 of the Law in violation of Section 10(a)(1). The affected employee was the sole police mechanic assigned to a particular location and was the local Union president. As Union president, he would take Union leave for Union business as the need arose. He was also absent on occasion because of vacation or illness. The employee received notice that he was being transferred, and, when he asked the reasons for the transfer, his supervisor told him that the City needed a mechanic at his work location forty hours a week. His supervisor also expressed concern about the amount and unpredictability of his union duties. The employee's ability to perform his Union duties were largely unaffected by the transfer.

Absent evidence that the transferred Union president's new job was less desirable than his previous position, that his job duties had changed or that his Union activities had been restricted by the transfer, the Commission determined that the transfer has no tangible adverse impact. Therefore, the Commission was unable to determine that the City's action was coercive or had a chilling effect on the employee's right to engage in protected activities.

The issue in Town of Fairhaven, Case No. AO-13 (August 20, 1992) was whether a drug testing screening proposal submitted during negotiations for a successor contract covering public works employees was a mandatory subject of bargaining. Applying the balancing test first articulated in Town of Danvers, 3 MLC 1559 (1977), the Commission determined that the general subject of drug testing for public works employees is a mandatory subject of bargaining. The Commission reasoned that drug testing, like other physical examinations, may directly affect an employee's job security, assignments, and conditions of continued employment. Further the Commission was unable to identify any overriding managerial prerogative that would outweigh the employee's interest in bargaining about the effects of drug testing on their working conditions.

The Commission next considered whether the specified proposal should have been exempt from the bargaining obligation because the union alleged that it would require a waiver of individual constitutional rights. The Commission concluded that the disputed proposal did not on its face waive individual constitutional rights because the language of that provision satisfied the probable causes standards set out in the relevant state and Federal cases, including National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989) and Horsemen's Benevolent & Protective Ass'n, Inc. v. State Racing Commission, 403 Mass. 692 (1989).

Two cases decided by the Commission, City of Everett, 19 MLC 1304 (1992) (on appeal) and Board of Regents of Higher Education, 19 MLC 1248 (1992) concerned the obligation to bargain about health insurance benefits. In Board of Regents of Higher Education, the Commission considered whether the Board of Regents was required to bargain about the decision and the impact of the decision to change health insurance plans and carriers. Under G.L.c. 32A, the Group Insurance Commission (GIC) is authorized to negotiate with and purchase group health insurance policies and determines the amount of health insurance benefits to be provided to state employees. Notwithstanding the GIC's role, however, Chapter 32 does not restrict the statutory employer of state employees from bargaining about health insurance benefits.

In light of this statutory scheme, the Commission concluded that the Board of Regents was not required to bargain about the decision to change health insurance benefits because the decision to change insurance benefits was within the exclusive control of the GIC, which was not the statutory employer of the employees of the Board of Regents. However, the Commission found that the impact of GIC's change on terms and conditions of employment was within the scope of mandatory subjects of bargaining and was subject to a bargaining obligation. In reaching this conclusion, the Commission reasoned that the statutory employer of state employees could (and frequently did) negotiate supplemental insurance benefits, like those administered through a health and welfare trust fund, that do not conflict with provisions of c.32A.

In City of Everett, the central issue was whether the language of Chapter 653 of the Acts of 1989 relieved the City of any obligation to bargain with the Union representing its fire fighters before requiring those employees to contribute 10% toward the cost of their HMO premiums. The pertinent language of Chapter 653 provided, in part, that employees would pay a minimum of ten percent for the cost of HMO health insurance coverage, effective July 1, 1990. Further, Section 218 of Chapter 653 provided that, where the percentage contribution was established under a collective bargaining agreement, that contribution rate could not be altered until the applicable

collective bargaining agreement had expired or the parties had agreed to another contribution rate.

The Commission determined that this issue required it to interpret the collective bargaining agreement in effect between the parties on July 1, 1990, which included the intent of the parties when they entered into that agreement and their prior practices regarding HMO coverage. The pertinent contract language provided that, for the life of the agreement, the city would maintain the "Blue Cross/Blue Shield Municipal Master Medical Plan in effect on July 1, 1974 or its equivalent." The Commission concluded that this language determined explicitly the employees' share of HMO premiums. At the time the parties negotiated that language, the City offered its employees coverage under either an indemnity plan or an HMO, under c. 32B, Section 16, which required the City at the time to contribute the same dollar amount toward HMO premiums that it contributed toward indemnity plan premiums. Therefore, the Commission concluded that the rate for HMO premiums was one of the equivalent programs referred to in the parties' agreement and that the City could not change that contribution rate without first bargaining with the Union.

The issue of whether a public employer unlawfully interfered with restrained, or coerced employees in the exercise of their rights in violation of Section 10(a)(1) of the Law was raised in three decisions decided by the Commission during the past year. In Wakefield School Committee, 19 MLC 1355 (1992), the Commission considered whether the School Committee violated Section 10(a)(1) by preventing the president of the union representing its teachers from addressing the School Committee during the public participation portion of a School Committee meeting. The evidence before the Commission was that the School Committee had adopted a policy allowing for public participation at a portion of School Committee meetings. As part of that policy, the School Committee expressly limited employee participation during the public portion of the School Committee meetings to require employees to work through the school administration to resolve problems at the lowest possible level. Therefore, when the Union president attempted to speak at the public participation portion of a School Committee meeting to protest the hiring or an additional administrator, the School Committee suggested that she take up her concerns with the appropriate school administrators, even though she claimed to have discussed the issue repeatedly with the Superintendent.

The Commission found that the School Committee's policy was narrowly drawn, applied to all employees without regard to their union membership, and fostered a legitimate labor relations objective resolving concerns about employment matters at the lowest possible level. However, the Commission found that the application of the rule on the facts of this case violated Section

10(a)(1) because the manner in which the rule was applied stifled criticism of an issue already raised at a lower level of the school system because the employer did not want the issue discussed publicly.

Quincy School Committee, 19 MLC 1476 (1992) also raised an issue concerning whether an employer's policy restricting employee conduct violated Section 10(a)(1) of the Law. After a representation petition had been filed with the Commission, the Superintendent issued a memorandum to administrators stating that no representatives of labor organizations should be allowed to distribute literature in the school building, school mailboxes should not be used for that purpose, although school principals could choose to display those materials on a bulletin board available for literature from any parties, and no representatives of an employee organization should be allowed to meet with teachers within a school during school time to discuss representation. Although there was an unwritten no solicitation rule prohibiting all union solicitation on school premises during the school day before the Superintendent issues his memorandum, the principals had applied that policy inconsistently.

The Commission acknowledged that a public employer may promulgate rules regulating the distribution of union literature provided those rules are neutral and nondiscriminatory so as not to unduly restrict employee access to union information. Further, the Commission noted that a public employer may restrict access to its premises by non-employees in a nondiscriminatory manner provided unions can communicate with employees through other means.

Here, the Commission found that the written policy promulgated by the Superintendent failed to satisfy those requirements in several ways. First, the policy did not indicate that teachers had non-working time during the school day when non-work subjects, including union representation, could be appropriately discussed. Second, the written policy gave the principals of each school the discretion to decide whether to display union literature. Finally, the School Committee offered no reason to justify denying union representation access to school premises, even though it had an inconsistent practice or permitting them access in the past.

In Town of Winchester, 19 MLC 1597 (1992), the president of the Union representing the Town's fire fighters has drafted and distributed an open letter to citizens of surrounding communities criticizing the Town's action in reducing the level of its fire protection services. That letter was published in several area newspapers. At a subsequent meeting of the Board of Selectmen, a member of the Board made a statement to the effect that he appreciate the hard work of fire fighters and that he considered the letter to be a reflection on the Union, rather than on the employees. He then stated that thought there was a process

and a proper way of dealing with those issues and that articles like the one the Union president sent did not serve the process well.

Although the Commission found the Union president's letter to be concerted activity protected by Section 2 of the Law, it did not find that the statement at the Selectmen's meeting interfered with, restrained or coerced any employees in the exercise of their rights in violation of Section 10(a)(1) of the Law. In reaching that conclusion, the Commission declined to impose a gag rule that would prohibit public employers from commenting on public issues. The Commission observed that the statement was made in a tone of remorse and expressed the view that the Union president's letter was in bad taste and found that it would have a chilling effect on the right to engage in protected activity.

The issue in City of Lynn, 19 MLC 1599 (1992) (On Appeal) was whether the City was required to bargain before the fire chief unilaterally filed an application for an involuntary superannuation retirement for a fire fighter who had an application for accidental disability retirement pending. The Commission concluded that the manner in which the fire chief exercised his discretion to file an involuntarily retirement application pursuant to G.L.c. 32, Section 16 had a significant impact on conditions of employment ad required bargaining. In addition, the Commission found that the fire chief's action in this case was inconsistent with past practice because the chief did not pursue involuntary applications for employees if the employees also has their own voluntary applications pending.

In City of Boston, 19 MLC 1613 (1992) the Commission considered whether the practice of having a paid union representative address correction officer recruits during working hours was a mandatory subject of bargaining. Applying the Danvers balancing test, the Commission found that allowing unions to address new employees during training is a mandatory subject of bargaining. The Commission reasoned that allowing a Union representative to address new recruits benefitted the Union and the employees, who had an interest in learning about the Union's internal procedures and their contract rights. Further, the City advanced no managerial interests which would outweigh the Union's interest in recruiting new members and the employee's interest in exercising their right of self-organization.

Town of Ware, 19 MLC 1700 (1993) involved a request for binding arbitration pursuant to Section 8 of the Law filed by an individual employee. The recognition clause in the agreement under which the employee requested arbitration stated that the Town recognized "all Administrative Personnel as a comprehensive committee for the purpose of collective bargaining in Chapter

149, Section 178N..." The Town opposed the request on the grounds that the Administrative Personnel group was not an employee organization within the meaning of Section 1 of the Law and that an individual members of that group had no standing to file a request for binding arbitration.

Citing Massachusetts Correction Officers Federated Union, 15 MLC 1380 (1989), the Commission found that the Administrative Personnel group was an employee organization within the meaning of Section 1 of the law. The Commission reasoned that, even though the group had no officers, by-laws, or dues, one of the purposes of the group was to bargain with the Town over wages, hours, and other terms and conditions of employment. Moreover, because the parties' agreement did not restrict the role of an individual employee from filing and processing grievances, up through and including an order pursuant to Section 8 of the Law, the Commission found the employee to be a party to the agreement for the purposes of Section 8 with the requisite standing to file a request for binding arbitration.

City of Beverly, 19 MLC 1724 (1993) (On Appeal) raised the issue whether a clause in the collective bargaining agreement between the City and the Union representing the police patrol officers was an illegal parity provision. The disputed clause provided that "No officer of the rank above that of sergeant shall be assigned any detail unless he is in a detail of three (3) or more men." The Commission held that this clause was valid work preservation clause that defined the work that was to be considered non-bargaining unit work. The clause was not an illegal parity clause because it did not force one unit to bargain the wages, benefits, or other terms and conditions of employment of another unit. Any work preservation agreement necessarily restricts other bargaining units from performing the same work; but such a restriction does not constitute an illegal parity agreement.

The Commission clarified the obligations of labor and management when, during negotiations, each waits for the other to make a proposal. Reiterating that no party can change the status quo ante of a mandatory subject of bargaining without (i) agreement of the other party, (ii) impasse in negotiations, or (iii) waiver by the other party or its right to negotiate, the Commission explained that no waiver occurs while a party who has protested a change awaited further proposals from the party who has proposed the change. The Commission also noted that one party may not establish an artificial or unreasonable deadline for completing negotiations in an effort to reduce the time available for bargaining. Town of Natick, 19 MLC 1753 (1993).

In City of Chicopee, 19 MLC 1765 (1993), (On Appeal) the Commission held that only appointed officials who are managerial employees are excluded

from collective bargaining by Section 1 of c. 150E. Because the parties stipulated that Deputy Collector, Assistant City Clerk, Assistant Assessor and Assistant Treasurer were appointed, non-managerial positions, there was no statutory reasons to exclude the positions from the bargaining unit, and the City violated its obligation to bargain in good faith when it refused to bargain with the Union regarding the disputed positions.

In a ruling on a Motion to Dismiss in Massachusetts Water Resources Authority, 19 MLC 17778 (1993), the Commission clarified the term "open period" as it applies to the contract bar rule. The MWRA argued that, because the parties signed an agreement which was retroactively effective to a period before the filing of the petition, the agreement should act as a bar to the petition just as if the contract had been in effect on the date that the petition was filed. In denying the MWRA's motion, the Commission noted that the MWRA did not contend it was unaware of the pendency of the petition at the time of the execution of the agreement. The MWRA could have completed contract negotiations cognizant of the potential expansion of the bargaining unit. Therefore, the pendency of the petition served the purpose of the contract bar rule, which is to promote stability in labor relations by ensuring all parties are aware of which unit positions are included in the unit covered by their collective bargaining agreement.

In Town of Tewksbury, MUP-9016 (1993), the Commission held that the Town engaged in a prohibited practice when the Town Manager told Union representatives that if they did not support a proposed level-funded budget with no lay-offs, at a town meeting he would recommend a lower budget with lay-offs. The Commission concluded that speaking at a town meeting is activity protected by §2 of the Law, and that a reasonable employee would have understood the Town Manager's statements to be a threat not to speak against the budget proposal at the town meeting. Therefore, the Town violated the Law because this threat would manifest itself by tending to restrain or coerce employees from exercising their statutory rights to speak freely in support of their views at the town meeting.

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APPENDIX

EVOLUTION OF PUBLIC EMPLOYEE BARGAINING

1935	Wagner Act (National Labor Relations Act) gave collective bargaining rights to private sector employees in interstate commerce.
1937	Massachusetts passes Chapter 150A extending bargaining rights to private sector employees within the Commonwealth; Labor Relations Commission established.
1958	All public employees (except police officers) granted the right to join unions and to "present proposals" to public employers. Chapter 149, Section 178D.
1960	Employees of city of town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the manner and method of bargaining. Chapter 40, Section 4C.
1962	The Massachusetts Turnpike Authority, the Massachusetts Port Authority, the Massachusetts Parking Authority, and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority became subject to the representation and unfair labor practice provisions of Chapter 150A.
1964	State employees given the right to bargain with respect to working conditions (but not wages). Chapter 419, Section 178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective bargaining negotiations that bargaining took place.
1964	Chapter 150A amended to include health care facilities as "employers" and nurses as "employees."
1965	Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment Chapter 419, Sections 178G-N. This repealed Chapter 40, S.4C.
1968	Chapter 150A amended to expressly include private nonprofit institutions as "employers" and nonprofessional employees of a health care facility or of private nonprofit institutions (except members of religious orders) as "employees."

1969	Medonca Commission established by legislature to revise public employee bargaining laws.
1973	Most public employees - state and municipal - extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.
1974	Chapter 150E amended to strengthen enforcement powers of Labor Relations Commission, modify union unfair labor practices, modify standards for exclusion of managerial employees.
1975	LRC issued standards for appropriate bargaining units affecting fifty-five thousand state employees in more than two thousand job classifications. Ten statewide units were created--five non-professional and five professional. Statute passed providing for separate bargaining unit for state police. [Employees of the University of Massachusetts, and the state and community colleges also have separate units.]
1977	Chapter 150E extended to court employees in the judicial branch; two state-wide units (excepting Middlesex and Suffolk Counties' Superior Court court officers) established for judicial branch employees.
1977	Housing authorities and their employees covered by the representation and prohibited practice sections of Chapter 150E. [Most other Authorities remain subject, to varying degrees, to Chapter 150A.]
1977	Joint Labor-Management Commission established to oversee collective bargaining negotiations and impasses involving municipal police officers or fire fighters.
1977	Agency service fee provisions are clarified to require that employee organizations provide a rebate procedure and to indicate which expenditures may be rebated to employees.
1980	"Proposition 2 1/2" enacted, repealing final and binding arbitration for police and firefighter contract negotiations.

1981 Chapter 150E amended to make decisions of the Labor Relations Commission reviewable in the Appeals Court.

1981 Labor Relations Commission empowered to refer to bargain cases to the Board of Conciliation and Arbitration of the Joint-Labor Management Committee for mediation.

1981 Section 11 of Chapter 150E amended to articulate the standard for issuing complaints in prohibited practice cases.

1981 The definition of "employer" or "public employer" in Section 1 of Chapter 150E was amended to specifically include all political subdivisions, with limited exceptions. In addition, the definition of "professional employee" in Section 1 of Chapter 150E was amended to specifically include a detective, member of a detective bureau or police officer who is primarily engaged in investigative work in any city or town police department with more than 400 employees.

1982 LRC issues comprehensive regulations setting forth agency service fee procedures, including requirements for unions to collect a fee pursuant to Section 12 of Chapter 150E and for employees to challenge the amount of validity of the fee.

1983 Chapter 150A amended to specifically cover private vendors who contract with the state or its political subdivisions to provide certain social and other services.

1984 The definition of "employer" or "public employer" in Section 1 of Chapter 150E was amended to include the newly created Massachusetts Water Resources Authority.

1986 Chapter 150E amended to forbid employers from unilaterally changing employees' wages, hours and working conditions until the collective bargaining process (including mediation, factfinding or arbitration, if applicable) has been completed.

1987 Arbitration reinstituted for police and firefighter contract negotiations, with arbitration awards subject to funding by the legislative body.

1990 LRC revises regulations to clarify procedures and increase efficiency.

DOCKET CLASSIFICATION CODES
CASES FILED FISCAL 1993

MCR	PETITION FILED BY OR ON BEHALF OF MUNICIPAL EMPLOYEES SEEKING CERTIFICATION OR DECERTIFICATION OF AN EMPLOYEE ORGANIZATION	91
MCRE	MUNICIPAL EMPLOYEES SEEKS TO RESOLVE CLAIM OF REPRESENTATION BY ONE OR MORE EMPLOYEES ORGANIZATION	0
SCR	PETITION BY OR ON BEHALF OF EMPLOYEES OF THE COMMONWEALTH SEEKING CERTIFICATION OR DECERTIFICATION OR AN EMPLOYEE ORGANIZATION	6
SCRE	STATE EMPLOYEE SEEKS TO RESOLVE CLAIM OF REPRESENTATION BY ONE OR MORE EMPLOYEES ORGANIZATIONS	0
CR	PETITION BY OR ON BEHALF OF PRIVATE EMPLOYEES SEEKING CERTIFICATION OR DECERTIFICATION OR AN EMPLOYEES ORGANIZATION	8
CRE	PRIVATE EMPLOYER SEEKS TO RESOLVE CLAIM OR REPRESENTATION BY ONE OR MORE EMPLOYEES ORGANIZATIONS	0
CAS	EMPLOYEE ORGANIZATION OR EMPLOYER SEEK CLARIFICATION OR AMENDMENT OF RECOGNIZED OR CERTIFIED BARGAINING UNIT	38
MUP	CHARGE FILED BY INDIVIDUAL EMPLOYEES OR EMPLOYEE ORGANIZATION AGAINST MUNICIPAL EMPLOYER	491
MUPL	CHARGE FILED BY MUNICIPAL EMPLOYER OR AN INDIVIDUAL AGAINST EMPLOYEE ORGANIZATION	80
SUP	CHARGE FILED BY INDIVIDUAL EMPLOYEES OR EMPLOYEE ORGANIZATION AGAINST STATE EMPLOYER	147
SUPL	CHARGE FILED BY STATE EMPLOYER OR INDIVIDUAL AGAINST AN EMPLOYEE ORGANIZATION	35
UP	COMPLAINT FILED BY STATE EMPLOYER OR INDIVIDUAL AGAINST AN EMPLOYEE ORGANIZATION	10
UPL	COMPLAINT FILED BY PRIVATE EMPLOYER OR INDIVIDUAL AGAINST EMPLOYEE ORGANIZATION	5
ASF	CHARGED FILED BY EMPLOYEE AGAINST AN EMPLOYEE ORGANIZATION CHALLENGING THE VALIDITY AND/OR AMOUNT OF AN AGENCY FEE	78
SI	PETITION FILED BY A PUBLIC EMPLOYER REQUESTING THE TO INVESTIGATE STRIKE THREAT BY EMPLOYEES	2
RBA	EMPLOYEE OR EMPLOYEE ORGANIZATION REQUEST COMMISSION TO ORDER BINDING ARBITRATION. SECTION 8 OF G.L.C.150E	2
AO	PETITION FILED BY EITHER PARTY TO COLLECTIVE BARGAINING NEGOTIATIONS SEEKING AN ADVISORY RULING TO DETERMINE IF A WRITTEN BARGAINING PROPOSAL IS WITHIN THE SCOPE OF MANDATORY NEGOTIATIONS. SECTION 6 OF G.L.C.150E	1
	TOTAL OF ALL CASES FILED FY	994

TABLE 1 - TOTAL CASES RECEIVED, CLOSED FISCAL YEAR 1993

	TOTAL CASES	REPRESENTATION CASES	UNFAIR LABOR PRACTICE CASES	UNIT CLARIFICATION CASES	REQUEST FOR BINDING ARBITRATION	OTHER
Received Fiscal 1993	994	105	768	38	2	81
Closed Fiscal 1993	994	102	833	47	2	10

TABLE 2 - REPRESENTATION CASES: RECEIVED, CLOSED FISCAL YEAR 1993

	TOTAL	MCR	MCRE	SCR	SCRE	CR	CRE
Received Fiscal 1993	105	91	0	6	0	8	0
Closed Fiscal 1993	102	89	0	4	0	9	0

TABLE 3 - UNFAIR LABOR PRACTICE CASES: RECEIVED, CLOSED FISCAL YEAR 1993

	TOTAL	MUP	MUPL	SUP	SUPL	UP	UPL
Received Fiscal 1993	768	491	80	147	35	10	5
Closed Fiscal 1993	833	560	74	142	39	14	4

TABLE 4 - SIZE OF UNITS IN REPRESENTATION ELECTION CASES, CLOSED, FISCAL YEAR 1993

TOTAL NUMBER OF ELECTION IN CASES CLOSED					TOTAL NUMBER OF VOTERS			
Size of Unit	Municipal		State		Private Sector		Total	
	Number of Elections	Total of Voters	Number of Elections	Total of Voters	Number of Elections	Total Voters	Number of Elections	Total of Voters
Under 10	24	156			1	4	25	160
10-24	22	345			1	16	23	361
24-49	12	451	1	23	1	29	14	503
50-74	1	63					1	63
75-99	2	182	1	129			3	311
100-149	2	239					2	239
150-199								
200-499	1	236	1	265			2	501
over 500								
TOTAL	64	1672	3	417	3	49	70	2138

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

FINANCIAL STATEMENT
FISCAL YEAR 1993

General Appropriation Received	$875,202
Salary Reserve Account Transfer	$4,006
TOTAL AVAILABLE	**$879,208**
EXPENDITURES:	
Salaries	$813,108
Employee Mileage & Training	$2,105
Contracted Student Interns	$2,230
Unemployment, Medicare & Universal Health	$8,842
Office & Administrative Expenses	$32,421
Work/Study Students & Temporary Clerical	$3,198
Equipment Purchases	$4,690
Equipment Leases & Maintenance Agreements	$11,777
TOTAL EXPENDITURES	**$878,416**
Reverted	$792